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# 92-251

NO._____

Supreme Court, U.S.
FILED
MAY 27 1992
OFFICE OF THE CLERK

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IN THE SUPREME COURT OF THE UNITED STATES

TERM,

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RAY DOUGLAS MITCHELL : PETITIONER,

V.

COMMONWEALTH OF VIRGINIA :RESPONDENT.

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PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT OF THE STATE OF VIRGINIA

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PETITION FOR A WRIT OF CERTIORARI

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RAY DOUGLAS MITCHELL:

PETITIONER

P.O. BOX 764

WELDON, N.C. 27890

(919)536-4041 HOME

(919)536-2560 BUS.

## QUESTION PRESENTED

The question presented is whether the Mecklenburg County Virginia District or the Circuit Court of that county has the right to take my 22 caliber weapons from me simply because I had them in my boat while fishing in Gaston Lake. There was absolutely no evidence presented at either trial that I fired, attemped to fire or in any way threatened anyone or anything with these guns. They were simply in my boat. The Fifth Amendment of The U.S. Constitution guarantees trial by jury where personal property is concerned and no person shall be deprived of property without due process of law.

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VIOLATION: POSSESSION FIREARMS ON ROANOKE RIVER

NORTH CAROLINA

BERTIE COUNTY 76 CR 94

STATE

William Richard Burton

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IN THE GENERAL COURT OF JUSTICE

SUPERIOR COURT DIVISION

(Sept. 7, 1976)

JUDGEMENT

The ruling of the District Court is affirmed for the following reasons;

1. The presumption of constitutionality is without merit on appeal from the ruling of the lower court.

2.The act is patently unconstitutional on its face and is in violation of the Second Amendment to the Constitution

of the United States and also the Constitution of the State of North Carolina.

3. The right to keep and bear arms is an absolute right except in the proper exercise of police power - which is absent in this case.

4. There is no reasonable association of this bill to the public safety of the citizenry it intends to protect.

5. The legislation is in the nature of a restriction by virtue of the language in Section 1, which restricts it to certain people and a certain area, and as such, it is unconstitutional as a restricted class action.

6. Local criminal laws are generally frowned upon by the court, and in this instance since it was not a proper exercise of police power, it is declared unconstitutional for that reason.

7. The act is capricious, unreasonable, ambiguous and would seem to serve no understandable useful purpose except to discriminate against a very limited group of citizens in a very limited area.

. . . . . .

VIOLATION: POSESSION OF FIREARM
ON MEHERRIN RIVER

STATE OF NORTH CAROLINA

COUNTY OF NORTHAMPTON

STATE V.

RAY D. MITCHELL

RICHARD E. CHRISTENBORG

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION

FILE NUMBERS: 82-Cr-4537 & 82-Cr4538

ORDER

This matter coming on to be heard and the Court finds as a fact:

This law is patently unconstitutional on its face and in violation of the Second Amendment to the Constitution of the United States and also the Constitution of the State of North Carolina;

The right to keep and bear arms is an absolute right except in the proper exercise of police power-- which is absent in this case;

There is no reasonable association of this bill to the public safety of the citizenry it intends to protect;

The legislation is in the nature of a restriction by virtue of the language in Section 1, which restricts it to certain people and a certain area, and as such, it is unconstitutional as a restricted class action;

Local criminal laws are generally frowned upon by the Court, and in this instance it was not a proper exercise of police power, it is declared

unconstitutional for that reason;

This law is capricious,unreasonable, ambiguous and would seem to serve no understandable useful purpose except to discriminate against a very limited group of citizens in a very limited area as specified in Section 1 of the Bill and for that reason it is declared unconstitutional.

This the 29th day of November, 1982.

. . . . . .

U.S. CONSTITUTION AMENDMENT . 5

Guarantee of trial by jury. Personal property to be respected. No person shall be deprived of property without due process of law.

OPINIONS BELOW

From the Supreme Court of

Appeals of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of the appeal, the court dismisses the petition for appeal pursant to Code s 17-116.07 (1). Because this is a misdemeanor case where no incarceration has been imposed and the Court of Appeals of Virginia has dismissed the case in accordance with the Rules of Court, that decision is final, and this Court lacks jurisdiction to consider an appeal.

Justice Keenan did not participate in the consideration of this case.

JURISDICTION

The Supreme Court of Virginia denied this appeal in part because they say they have no jurisdiction to consider an appeal in this case, Court of Appeals No.0475-91-2. The 5th Amendment U.S. Constitution.

## CONSTITUTIONAL PROVISIONS

The following articles are involved in this Petition:

(1) U. S. Constitution, The 5th Amendment.

Guarantee of trial by jury. Personal property to be respected. No person shall be deprived of property without due process of law.

(2) Amendment 2:

The right to keep and bear arms shall not be infringed.

## STATEMENT OF CASE

On May 8, 1990 while fishing in the Roanoke River Tailrace below Kerr Dam in Mecklenburg County Virginia, a wildlife officer, Mr. R.A. Clark stopped me and checked my fishing license, boat registration and boat safety equipment. He charged me with having a 22 cal. rifle and a 22 cal. pistol in my boat, Va. wildlife regulation 325-02-25-4. I was ordered to appear in district court on 6-14-90. In court the officer testified that I told him that I had the weapons with me to shoot snakes. What I told him was that I had the rifle with me for protection against snakes, and the pistol was in my boat because I did not want to leave it exposed in my truck at the boat landing. I told the judge that I had certified copies of court cases

involving weapons on boats in the Roanoke River that had been thrown out of court for various reasons including being unconstitutional. The prosecutor objected and I was not allowed to show them to the judge. The prosecutor ask the judge to take my weapons. The judge ordered that I be fined $50.00 and court cost and my weapons to be taken. I respectfully appealed his decision.

On February 18,1991 I was tried in circuit court of Mecklenburg County. The same testimony was given by officer Clark.Judge Mc Cormick asked me if I had anything to say and I told him I wanted to apologize to the officer and to the court for being in Va. waters with 22 cal.weapons in my boat and that I was completely unaware of the regulation. Judge Mc Cormick stated that he was not aware of the regulation either.

I asked the judge if I could be fined for not knowing the regulation and my property be given back to me. I also asked if he would look at the copies of the North Carolina District and Superior Court cases. The judge refused. He dismissed the $50.00 fine and ordered my property be taken from me. I was ordered to pay $53.00 court cost, which I did.

On February 28, 1991 I appealed to the Court of Appeals of Virginia. On August 7, 1991 I received a letter from the court of appeals stating my appeal had been granted. The letter also stated that I must send $500.00 certified funds to Mecklenburg Co. Clerk, which I did. It also asked for an appendix which I did to the best of my ability.

On November 18,1991 I received a letter from the Virginia Court of Appeals stating my appeal had been dismissed

because the record was insufficent.

On December 10,1991 I appealed to the Supreme Court of Virginia and on January 31,1992 the court dismissed the appeal because of code 17-116-07 and a misdemenor and the court lacks jurisdiction to consider an appeal. I requested motion to rehear. The motion was denied on 2-28-92.

. . . . . .

REASONS FOR GRANTING WRIT

The United States Constitution provides that property may not be taken by the goverment without due process of law. Ford V. Turner, 531 A. 2d 233 (D.C. 1987). Before the goverment can take my property there must be a hearing which complies with the due process requirement. At such hearing the state must prove by a preponderance of the evidence that

the firearm was used in a crime. Therefore if the commonwealth's attorney can not prove by preponderance of the evidence that my firearms were used in a criminal activity, I am entitled to the return of my property.

. . . . . .

CONCLUSION

In my trial in the district court and in the circuit court of Mecklenburg County Virginia, the only evidence offered by the state was that I did in fact have these 22 cal. guns in my boat. Absolutely no evidence was presented that I in anyway fired, attempted to fire, threaten anyone or anything in anyway what so ever with these guns. I fully believe that my property was taken from me because I did not have and could not

afford the ridiculous fee that a local lawyer quoted me to represent me in this matter.When I appealed to the Virginia Court of Appeals and was denied and later to the Virginia Supreme Court of Appeals it too denied, the commonwealth's attorney that was assigned to represent the state against my appeal said nothing in support of the lower courts ruling to take my property. Instead she attacked my personal lack of education and ability to read and understand the complicated rules of court, and to present my case in such a way that the court would except. I am asking your Honorable Justices of the highest court of this country to consider this Writ.

APPENDIX

In the Court of Appeals of Virginia on Wednesday the 7th day of August, 1991.

Ray Douglas Mitchell,

Appellant,

against Record No. 0475-91-2

Circuit Court No. CR90-123

Commonwealth of Virginia, Appellee.

From the Circuit Court of Mecklenburg County before Judges Benton, Coleman and Willis.

A judge of this Court having determined that this petition should be granted, an appeal is here by awarded to the petitioner from a judgement of the circuit Court of Mecklenburg County dated February 18, 1991.

Appeal bond or an irrevocable letter of credit in the amount of $500.00 shall be posted as required by Code § 8.01-676 .1(B). The clerk is directed to certify this action to the trial court and to all counsel of record. Pursant to Rule 5A:25, an appendix is required in this appeal and shall be filed by the appellant at the time of the filing of the opening brief

A Copy,

Teste:

Patricia Davis,

Clerk

. . .

In the Court of Appeals of Virginia on Monday the 18th day of November, 1991.

Ray Douglas Mitchell

APPELLANT,

against Record No. 0475-91-2

Circuit Court No. CR90-123

Commonwealth of Virginia,

APPELLEE.

Upon an appeal from a judgement rendered by the Circuit Court of Mecklenburg County.

Upon the Commonwealth's motion, this appeal is dismissed because the record on appeal is insufficient for a fair and accurate determination of the issues presented. The issuses presented by Ray Douglas Mitchell involve questions of fact. However. the record on appeal does not contain either a transcript or a statement of facts as provided in Rule 5A:8. While 5A:7 and 5A:8 do not require that a transcript or a statement of facts be submitted with every appeal from the trial court, the merits of Mitchell's claims cannot be decided without examining a transcript or a statement of facts of the proceedings

involved. See Turner v. Commonwealth, 2 Va. App. 96, 100, 341 S.E. 2d 400, 402 (1986).

This order shall be certified to the trial court.

A Copy,

Teste:

Patricia G. Davis,
Clerk

By:

Cynthia L. Mc Coy
Deputy Clerk

*There was no transcript of this trial.

. . .

In the Supreme Court of Virginia held at the Supreme Court Building in the City fo Richmond on Friday the 31st day of January, 1992.

Ray Douglas Mitchell, Appellant,

against Record No. 911873

COurt of Appeals No. 0475-91-2

Commonwealth of Virginia, Appellee.

From the Court of Appeals Of Virginia

Upon review of the record in this case and consideration of the argument submitted in support of the granting of an appeal, the Court dimisses the petition for appeal pursuant to Code §17-116.07(1). Because this is a misdemeanor case where no incarceration has been imposed and the Court of Appeals of Virginia has dismissed the case in accordance with the Rules of Court, that decision is final, and this Court lacks jurisdiction to consider an appeal.

Justice Keenan did not participate in the consideration of this case.

A Copy,

Teste:

David B. Beach, Clerk

. . .

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 28th day of February, 1992.

Ray Douglas Mitchell, Appellant,

against Record No. 911873

Court of Appeals No. 0475-91-2

Commonwealth of Virginia, Appellee.

Upon a petition for rehearing

On consideration of the motion of the appellant, which is treated as a petition to set aside the judgement rendered herein on the 31st day of January, 1992 and grant a rehearing thereof, the prayer of the said petition is denied.

A Copy,

Teste:

David B. Beach, Clerk